



*The Commonwealth of Massachusetts*  
*Committee for Public Counsel Services*  
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March 16, 2000

WRITER'S DIRECT DIAL NUMBER

Honorable Mark C. Montigny  
Chairman  
Senate Committee on Ways and Means  
State House, Room 212  
Boston, MA 02133

Dear Chairman Montigny:

Enclosed please find the Committee for Public Counsel Services' (CPCS) FY2001 Budget Request. The requested appropriation is \$105,278,910; which includes \$97,703,060 of necessary maintenance, and \$7,575,850 of proposed expansion. The Budget Request includes two new line items to fulfill the new CPCS responsibilities for sexually dangerous person (SDP) commitments (line item 0321-1505), and sex offender registration (SOR) representation (0321-1506).

Before I present our high priority funding requests, permit me to share a piece of long-awaited good news with you. For the first time in at least a decade, the number of district and juvenile court counsel assignments **decreased** by over 5,800 cases in FY99 compared to the previous year. Moreover, our preliminary analysis of assignments from the same courts during the first half of the current fiscal year shows an additional decline of 2,500 assignments. It is my belief that the Legislature's creation of the Commission on Indigency Verification, and the serious attention devoted to its work under the leadership of Chief Justice Dortch-Okara, has measurably heightened the attention of judges to the fiscal importance of accurate indigency verification and the avoidance of unnecessary counsel assignments. CPCS appreciates the assistance provided by the Committee on Ways and Means to this effort.

I would also like to inform you that CPCS client contributions toward the cost of counsel reached a record level of \$5.93 million in fiscal year 1999. These contributions have increased every year since 1991, and now total just under **\$35 million** during this nine-year period (please see the attached Counsel Fees & Partial Indigency Fees - FY1991-99). Since these payments go into the General Fund, and therefore do not directly offset agency expenditures, they have on occasion been overlooked.

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There are six major CPCS priority funding requests which I want to bring to your attention, and for which I request your support.

(1) Hourly rate increase for assigned private counsel:

We propose an increase in the murder case compensation hourly rate from \$54 to \$64 at a cost of \$649,000; and a three-dollar increase for all other assigned counsel representation at a cost of \$5.881 million. The funding of these proposed increases would be a significant step toward implementing the 1994 recommendation of the bipartisan Massachusetts Bar Association Commission on Criminal Justice Attorney Compensation which surveyed the rates in comparable states and recommended much more extensive hourly rate increases.

However, in recognition of both the Commonwealth's limited resources and the numerous pressing demands for increased funding which are annually addressed to this Committee, we have proposed a much more modest increase. Our plan, applicable to all cases except murder, calls for a three dollar hourly increase in FY2001, two dollars in 2002 and two dollars in 2003, for a total three-year increase of seven dollars per hour. We believe that this proposal is reasonable and justified. Please see the attached copy of my April, 1999, testimony to the Joint Committee on the Judiciary concerning the inadequacy of the rates which we are currently authorized to pay to assigned counsel, and the March 14, 2000, endorsement of this initiative by the President of the Massachusetts Bar Association.

(2) Maintaining the CPCS salary restructuring funded in FY2000:

Our maintenance requests for budget lines 0321-1500, 1502, 1503 and 1504 are needed in order to preserve the CPCS staff salary restructuring which was proposed by your Committee and ultimately funded in the FY2000 budget. Under this restructuring, beginning full-time public defenders may expect to be paid at the annual rate of \$31,000. Assuming competent performance, they may anticipate earning a salary of \$45,000 after five years of service and \$55,000 after ten years.

Achievement of this long-sought salary structure was very important to us, because, if maintained, it should enable us to retain the services of the excellent public defenders and other staff whom we hire, train and support, but whom we often lose to the private sector and even to unionized government service due to salary inadequacy and uncertainty. As indicated above, the maintenance funding we have requested is necessary in order to maintain our salary structure through FY2001. In his proposed budget, Governor Cellucci recommended much of the funding needed to effectuate this purpose. However, I ask you to provide the modest amount of additional

maintenance funding in our staffing accounts--specifically, a total of \$100,015 -- which is needed to fulfill our salary restructuring plan for 2001.

The Governor's budget, however, fails to provide any funding for our priority expansion requests, to which I now turn.

(3) Funding for the Team Leader Program:

The FY2000 budget authorized CPCS to operate a pilot Team Leader program in not more than four counties, but prohibited the use of private attorney or court cost appropriations for the expenses of the program.

We are convinced that the Team Leader Program can elevate the quality and the efficiency of private counsel representation in those counties which have embraced this concept. However, we cannot operate the program without funds. Therefore, we ask to earmark \$480,000 in the private counsel criminal compensation line item (0321-1510) for the four-county pilot program, and seek \$82,600 for agency staffing and expenses in our Operations account (0321-1500). No court cost appropriation is required.

(4) Enhance effectiveness of Youth Advocacy Program:

One essential component of our Roxbury-based, nationally lauded Youth Advocacy Program (YAP) is the daily participation of an outstanding forensic child psychologist, Dr. Ann Tobey. Dr. Tobey is widely respected for her expertise in juvenile delinquency issues. Her psychological testing of YAP's clients, and the evaluative information which she provides to the Juvenile Court, are critically important components in the effort to help poor children avoid the cycle of violence and crime in which they are otherwise ensnared. Dr. Tobey's salary has been funded by foundation grants since September, 1995--long past the time originally intended. Her work is vital to YAP's continued success in providing comprehensive representation to troubled Boston children. We seek funding in the amount of \$46,150 to assure Dr. Tobey's continued participation in the work of our Youth Advocacy Project.

The addition of two trial attorneys and one social worker/community liaison will enable YAP to offer its proven services to children in Cambridge and Lowell, where a critical need for enhanced juvenile representation has been identified. We seek funding in the amount of \$141,700 in line 0321-1504 for this expansion of our Youth Advocacy effort.

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(5) SDP Commitment Representation:

The frequency with which District Attorneys have petitioned the courts to impose commitments for life upon allegedly sexually dangerous persons has far exceeded expectations, and has underlined the necessity of funding our \$386,000 proposal (new budget line 0321-1505) to respond to this new and urgent responsibility which has already overwhelmed our one-attorney Mental Health Litigation Unit.

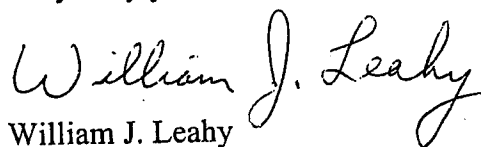
(6) Sex Offender Registry Representation:

Whether or not the injunction imposed by the Superior Court in the case of Roe v. Reilly is upheld on appeal, it seems that the Sex Offender Registry Board (SORB) will be in active operation as the coming fiscal year begins. In order to comply with the extensive responsibilities vested in CPCS by the sex offender registration statute, we will need the \$4,024,700 requested in new budget line 1506 (\$1.9 million), and existing lines 1512 (\$791,700) and 1520 (\$1.3 million).

In closing, let me clarify that our \$588,000 request for the additional costs needed to relocate our Boston headquarters was not funded in H. 1. Our request for proposals for new office space is now pending. We will keep your staff promptly informed as to a projected moving date and an updated, more precise cost estimate.

Thank you for your attention to our Budget Request.

Very truly yours,



William J. Leahy  
Chief Counsel

WJL/pd

Attachments

# **Committee For Public Counsel Services Fiscal Year 2001 Budget Proposal**

**Senate Ways & Means Committee Hearing**

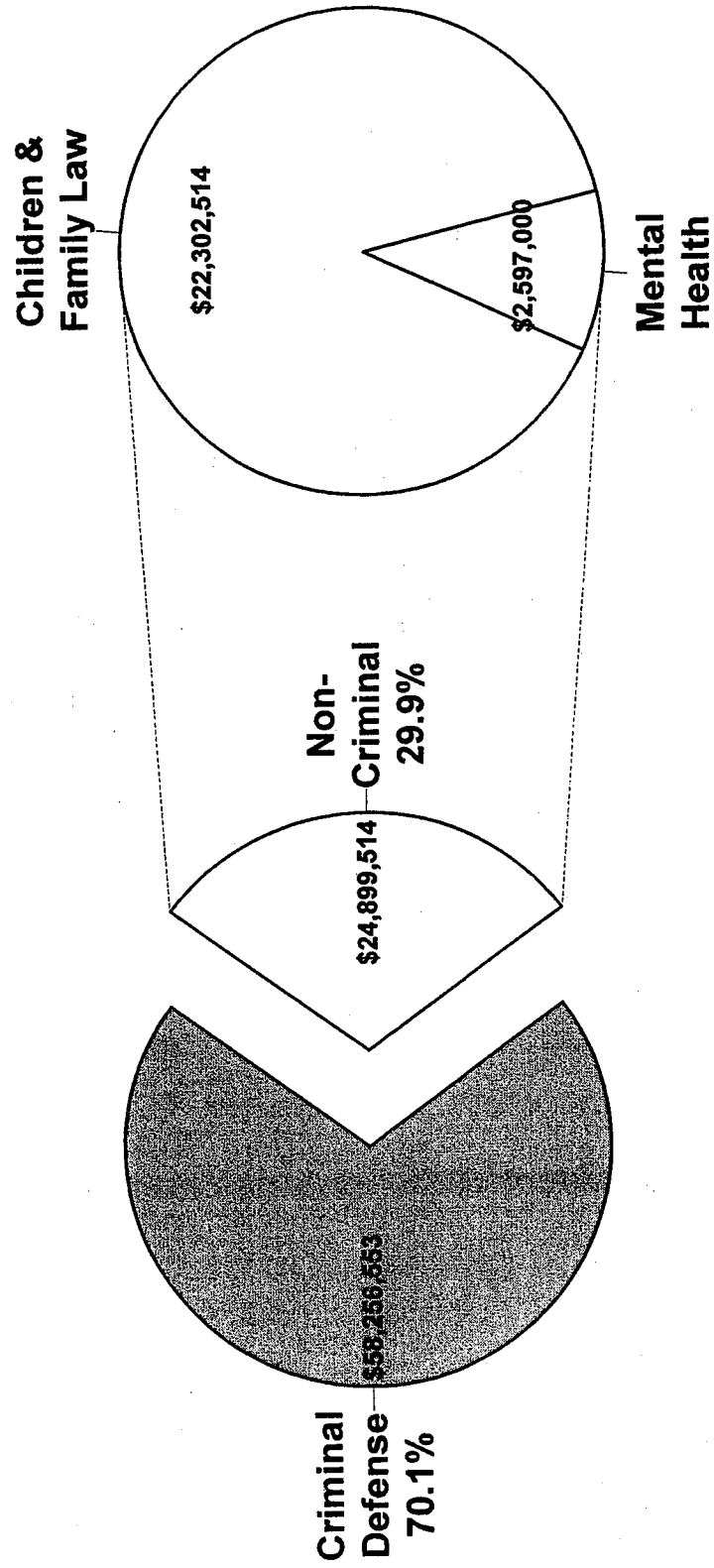
**March 16, 2000**

# CPCS FY 2001 Budget Request

Revised 2/7/00

Appropriations 0321	1500 Oper's	1502 P. defend.	1503 CAFL	1504 YAP	1505 SDP Rep	1506 SOR Rep	1510 Priv.Crim.	1512 Non-Crim.	1520 Ct. Costs	Total
FY 2000 Appropriations	7,074,170	7,893,470	759,514	443,913			43,500,000	21,000,000	4,695,694	85,366,761
Needed To Level Fund To FY '99's Actual							925,000	380,000	1,196,000	2,501,000
Needed To Fund FY' 00 Growth							500,000	680,000	6,000	1,186,000
Subtotal FY 2000 Estimate	7,074,170	7,893,470	759,514	443,913	386,000		44,925,000	22,060,000	5,897,694	89,053,761
'01 SDP Civil Commitment Representation										386,000
'01 Sex Offender Registry Representation						1,928,000		791,700	1,305,000	4,024,700
Needed for FY 2001 Fees/Ct Costs Growth							1,215,000	1,258,000	401,000	2,874,000
Maintenance FY '00 Salary Restructuring	146,590	315,740	26,540	16,490						505,360
Rent Maint. Boston & 5 County Offices	650,294	83,895	3,084							653,378
Annualization of Key Positions			49,000							132,895
State WAN Chargeback Maintenance	7,200									7,200
County Bar Advocate Maintenance	65,766									65,766
Subtotal '01 Including Maintenance	7,944,020	8,293,105	838,138	460,403	386,000	1,928,000	46,140,000	24,109,700	7,603,694	97,703,060
Dist Ct Team Leader program - 2 FTE's	82,600						480,000			562,600
Mental Health Staff Attorney - 1FTE	48,800									48,800
Coordinator contracts Increase	92,000									92,000
Post Conviction Staff Attorney - 1 FTE	41,800									41,800
Youth Advocacy Enhancements - 5 FTE's										187,850
CAFL Social Worker - 1 FTE	67,000		35,800	187,850						35,800
PC Trainer, and Accounting Clerk -2FTE's	10,000									67,000
Diversity Training										10,000
Subtotal Before Private Atty Hourly Incr.	8,286,220	8,293,105	873,938	648,253	386,000	1,928,000	46,620,000	24,109,700	7,603,694	98,748,910
Private Attorney Hourly Rate Increase							4,696,000	1,834,000		6,530,000
Total	8,286,220	8,293,105	873,938	648,253	386,000	1,928,000	51,316,000	25,943,700	7,603,694	105,278,910

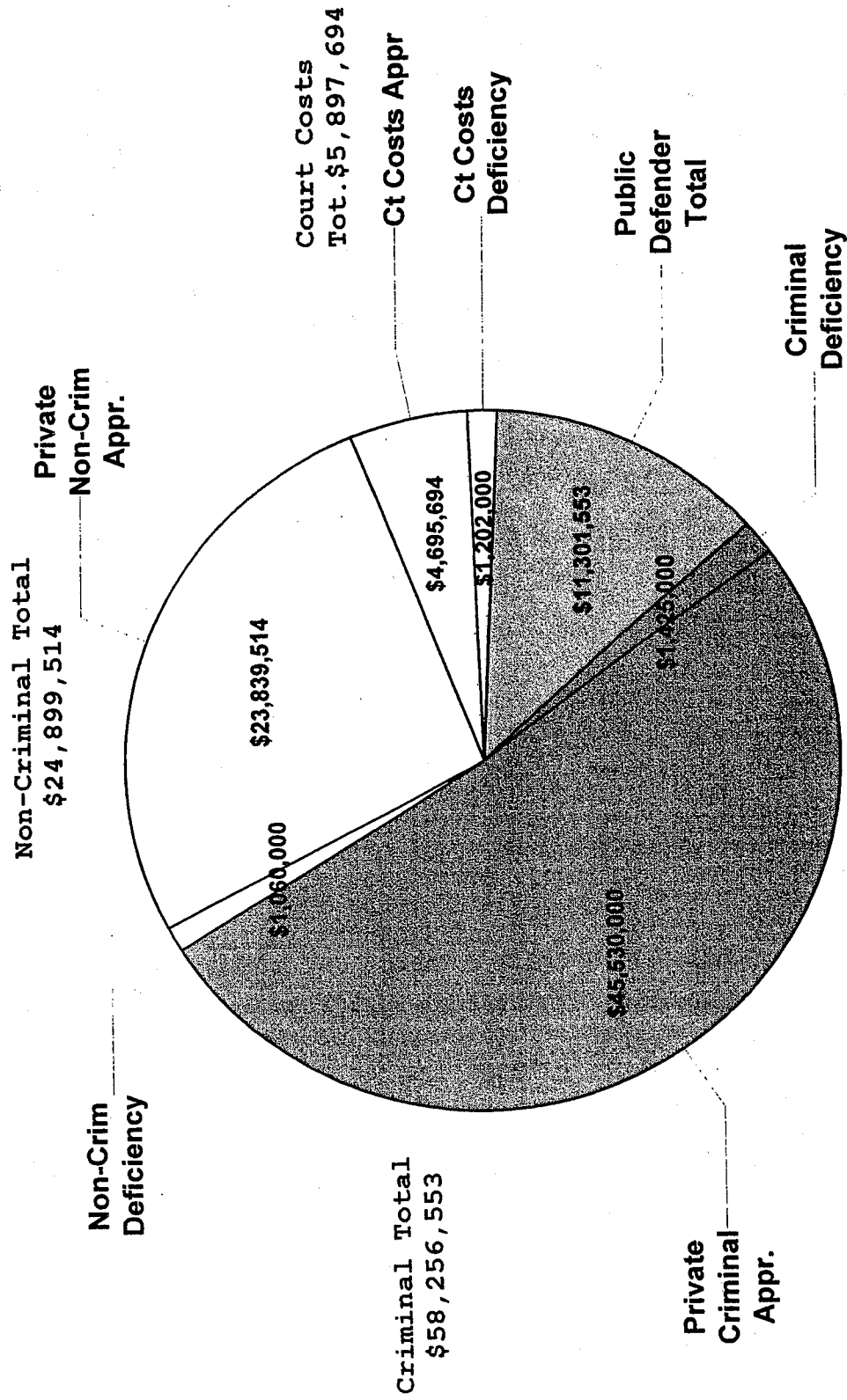
# CPCS FY 2000 Expenditure Estimate



Total Expenditure Of \$83.2 Million, Not Including \$5.9 Million Of Court Costs

# WHERE THE MONEY GOES

CPCS FY 2000 Estimated Expenditures



Total Expenditure Of \$89.1 Million  
Unfunded Deficiency Estimate Of \$3.7 Million



# MAJOR CPCS FISCAL CONTROLS

## I. BILLING AND PAYMENT CONTROLS

- o Creation of Audit Unit (1991)
- o Annual 1800 Hour Billing Limit (1994)
- o Family Law Oversight (1995)
- o Daily 10 Hour Billing Cap (1996)
- o Daily 3 Hour Waiting Time Cap (1996)
- o 5% Late Penalty (1996)
- o Indigent Court Cost Controls (1997, 1999)

## II. CASE INTAKE CONTROLS

- o No Jail - No Counsel Law (1991)
- o Indigency Rule Reform (1993)
- o Civil Infraction Law (1995, 1998)
- o Indigency Verification Commission (1999)

## III. STREAMLINE BILLING / ENHANCE AUDIT DATA

- o TeleBill (1996)
- o PCBill (1999)

## IV. INCREASE CLIENT PAYMENTS

- o Counsel Fee (1990)
- o Partial Indigency Payments (1993)

# Counsel Fees & Partial Indigency Fees - FY 1991-99

Funds Received Into The General Fund From Indigent Clients

